## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, :

Plaintiff,

:

v. : Case No. 4:05-CV-329-GKF-PJC

:

TYSON FOODS, INC., et al.,

:

Defendants. :

## STATE OF OKLAHOMA'S REPLY IN FURTHER SUPPORT OF ITS MOTION FOR CONTINUANCE [DKT #2573]

Plaintiff, the State of Oklahoma ("the State"), hereby submits its reply in further support of its Motion for Continuance ("State's Mot.") (Dkt. #2573) and in response to Defendants' memorandum in opposition to the same ("Defs.' Opp.") (Dkt. #2599).

As the Court is aware, the State seeks a brief 120-day continuance of the trial in this matter to address scheduling issues that would arise in the event the Cherokee Nation's Motion to Intervene (Dkt. #2564) were granted. Having strenuously argued that the Cherokee Nation is a required party, Defendants are hard-pressed now to oppose a modest continuance to allow the Nation's intervention and to permit the full adjudication of the original claims in this case.

Defendants base their opposition to a brief continuance on the cursory assertion that "several of the principal trial attorneys in this case have informed other federal and state courts that major trials in which they are involved could not be scheduled in the fall of 2009 (out of deference to this trial date), so those matters are now scheduled for January–March 2010." (Defs.' Opp. at 24-25.) They do not identify with any specificity which of "the principal trial

Defendants' opposition to the State's Motion for Continuance appears on pages 24-25 of Defendants' Joint Response in Opposition to Motion to Intervene by Cherokee Nation (Dkt. #2599.)

attorneys" would have a specific scheduling conflict, nor do they identify which "major trials" are "now scheduled for January–March 2010." While the State appreciates the scheduling challenges that a continuance may present, based on the posture of the case, the Cherokee's intervention is of great import that readily outweighs any inconvenience posed by a continuance. Furthermore, Defendants have multiple highly-skilled trial attorneys at their disposal; thus, any potential conflicts that may exist for a few individuals should not preclude a reasonable solution for rescheduling the trial. Moreover, the denial of the Cherokee Nation's Motion to Intervene and the State's Motion for Continuance would only create the real possibility that this case will be tried twice, causing the greatest burden to the parties, the Court, witnesses, and juries.

In addition, Defendants request that, in the event the Court grants the State's Motion for Continuance, the trial be postponed one year. Simply put, one year is not necessary for the completion of any limited discovery that may be permitted relating to the Cherokee Nation's unique claim and limited motions practice. The State requested a 120-day continuance because that is all that is needed. The Cherokee Nation's response cost claim would require limited discovery and could be accomplished expeditiously.

WHEREFORE, the State of Oklahoma respectfully requests that the Court grant a continuance of trial until its January 2010 docket.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of September, 2009, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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